

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF SILVER RUN ELECTRIC, LLC, FOR)
A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO BEGIN THE BUSINESS) PSC DOCKET NO. 18-0945
OF AN ELECTRIC TRANSMISSION UTILITY)
AUTHORIZED TO PROVIDE TRANSMISSION)
FACILITIES IN DELAWARE)
(FILED JULY 3, 2018))

MOTION OF SILVER RUN ELECTRIC, LLC TO MODIFY
CONDITIONAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Pursuant to 26 Del. C. § 203E and 26 Del. Admin. C. §3011.2.2.27 ("Regulation 3011), Silver Run Electric, LLC ("Silver Run" or the "Company") hereby moves for a modification of the Certificate of Public Convenience and Necessity ("CPCN") issued by the Delaware Public Service Commission on December 20, 2018. In support of this Motion, Silver Run states as follows:

1. On July 3, 2018, Silver Run Electric filed an application ("Application") with the Commission pursuant to 26 Del. C. § 203E(b) seeking a Certificate of Public Convenience and Necessity ("CPCN") to begin the business of an electric transmission utility authorized to provide electric transmission facilities in Delaware.

2. Silver Run's Application related to its proposed construction and operation of the scope of the Artificial Island solution (the "Project") designated to Silver Run by PJM Interconnection, L.L.C. ("PJM"), the regional electric grid

operator serving Delaware and all or parts of 13 other states and the District of Columbia. In particular, the Project consists of transmission system improvements and reliability upgrades PJM has determined are necessary to assure the reliability and stability of the regional electrical grid. The solution selected by PJM includes Silver Run's construction of the new 230kV Silver Run substation east of Odessa, Delaware, and a new 230kV transmission line crossing the Delaware River that will connect the Silver Run substation with the electrical system in the Artificial Island, New Jersey area.

3. Public Service Commission Staff ("Staff") and the Delaware Division of the Public Advocate ("DPA"), which intervened as a matter of statutory right, are the only parties to the proceedings in this matter, the Commission having not received to date any petitions to intervene, material objections, or written submissions raising significant issues with respect to the Application from any other persons or entities.

4. Applications for an electric transmission utility are governed by 26 Del. C. §203E enacted in early 2018 by the 149th General Assembly of the State of Delaware and signed into law by Governor Carney on February 14th, 2018.¹

¹81 Del. Laws c. 205.

5. In determining whether to grant Silver Run's Application for a CPCN, the Commission considered the following statutory criteria as set forth in §203E(b):

(1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred:

a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company;

b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services;

c. The engineering and technical design of any transmission facilities proposed by the applicant;

(2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers; and

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.²

6. On December 20, 2018, the Commission, pursuant to 26 Del. C. §203E, approved Order No. 9316 ("Order No. 9316") granting Silver Run's Application for a CPCN to begin the business of an electric transmission utility authorized to provide electric transmission facilities, subject to the express

² 26 Del. C. § 203E(b) (1)-(3).

condition and limitation that the authority granted by the CPCN shall not take effect until issuance by the Federal Energy Regulatory Commission ("FERC") an order on cost allocation accepting and approving either the Stability Interface Method ("SIM") or the Stability Deviation Method ("SDM") as the just and reasonable *ex ante* cost allocation for the Project.

7. The Commission further ordered in Order No. 9316 that if FERC has not issued its order selecting either the SIM or SDM as the cost allocation for the Project by February 28, 2019, that shall be deemed "material noncompliance" with the conditions of the CPCN under Section 203E(e)(1), and Silver Run's CPCN shall be deemed suspended as of that date. The suspension does not preclude Silver Run from filing subsequent requests for the Commissioner's review and consideration in this docket.

8. As of the date of this filing, FERC has not issued an order selecting the cost allocation for the Project.

9. As set forth in Order No. 9316, while the FERC proceeding has been pending, Silver Run has taken steps necessary to develop the Project according to PJM's timeline.

10. As further noted in Order No. 9316, Silver Run's construction activities under the permits and approvals received are restricted to certain times of the year, and its contractors face additional restrictions because of the nature of the work

and materials and equipment used. Silver Run submits that its and its contractors' ability to meet the required in-service date are at significant risk if critical path construction activities are not fully released immediately.

11. Silver Run continues to recognize the quandary in which the Commission finds itself given that FERC has not issued an order on the just and reasonable cost allocation methodology for the Project. Submitted with this Motion is a Supplement prepared by Silver Run that outlines the construction activities Silver Run needs to immediately commence in order to meet critical construction deadlines. Silver Run is, therefore, proposing that the Commission modify the conditional CPCN approval granted in Order No. 9316 in order to allow Silver Run to commence limited construction necessary to maintain the Project's current budget and required in-service date. Under this Proposal, if FERC does not issue an order by April 30, 2019 approving the SIM or SDM methodologies, the modified CPCN authority granted to Silver Run will be automatically suspended and the Commission will have authority to review, revoke, or further limit Silver Run's CPCN approval.

12. The Commission has discretionary authority under 26 Del. Admin. C. §3011.2.2.27 ("Regulation 3011") to "approve, conditionally approve, modify or deny" an electric transmission

CPCN application where it finds doing so is in the public interest.

13. The Commission determined in Order No. 9316 that the Application submitted by Silver Run Electric met the requirements of §203E(b), subject to the condition that FERC issue an order on cost allocation accepting either the SIM or the SDM as just and reasonable *ex ante* cost allocation for the Project.

14. The allocation of Project costs is the subject of proceedings pending before the Federal Energy Regulatory Commission ("FERC") in Docket EL15-95. The Commission, along with the DPA, Silver Run's parent company (LS Power), and other parties initiated the FERC docket to challenge the PJM Transmission Owner's existing solution based DFAX ("SBDFAX") cost allocation methodology, which would have allocated more than 90% of the Project's overall costs to the Delmarva Zone.³ Silver Run estimated in its CPCN Application that, under the SBDFAX allocation methodology, the average Delaware residential ratepayer would pay \$1.32 per month in transmission charges associated with Silver Run's remaining unspent portion of the Project solution.

³ Delaware-based electric load represents approximately 60% of the Delmarva Power Transmission Zone of PJM and, therefore, Delaware ratepayers pay approximately 60% of transmission project costs allocated to the Delmarva Power Transmission Zone.

15 On July 12, 2018, FERC issued a unanimous order⁴ (the "Rehearing Order") finding that application of the SBDFAX methodology to the Project would be unjust and unreasonable and would not allocate costs in a manner that is at least "roughly commensurate" with beneficiaries.⁵ To establish the just and reasonable *ex ante* cost allocation for the Project, the Rehearing Order established a paper hearing proceeding to develop additional information, and requested the parties to submit comments on three discrete cost allocation methodologies: (a) the Stability Interface DFAX Method and (b) Stability Deviation Method, both of which were developed by PJM, and (c) a hybrid methodology proposed by Exelon (the "Exelon Hybrid Method"). FERC's stated purpose in establishing the paper hearing procedure was "to further understand and decide among the methods" referenced in the Rehearing Order.⁶

16. FERC has not yet issued an order in Docket EL15-95 establishing the just and reasonable *ex ante* cost allocation methodology for the Project. Delaware ratepayers benefit from any savings below Silver Run's construction cost cap, however, and maintaining Silver Run's existing construction schedule is

⁴ One FERC Commissioner did not participate in the decision.

⁵ *Delaware Public Service Commission, et. al., v. PJM Interconnection, L.L.C., et. al.*, 164 FERC ¶61,035 (2018).

⁶ *Id.* at p. 42.

necessary to meet PJM's required June 1, 2020, in-service date for this critical grid reliability solution.

17. For these reasons the Commission determined in Order No. 9316 that it was in the public interest to grant Silver Run a conditional CPCN pending issuance by FERC of an order on cost allocation accepting and approving either the SIM or SDM as the Project cost allocation.

18. Project costs have risen during the conditional CPCN period and will continue to increase with ongoing construction delays. Silver Run, therefore, respectfully requests the Commission modify the conditional CPCN authority granted in Order No. 9316, as set forth Silver Run's Proposed Order submitted herewith, to extend the timing for FERC to issue an order on Project cost allocation approving either the SIM or SDM cost allocation methodologies until April 30, 2019. Silver Run also requests approval under the modified CPCN to begin construction in Delaware of critical path elements necessary to maintain Project schedule and budget, as set forth in the Supplement Silver Run submitted with this Motion, pending FERC's selection of the cost allocation methodology applicable to the Project.

19. If FERC does not issue an order in Docket EL15-95 confirming the selection of the SIM or SDM cost allocation methodologies referenced in the Rehearing Order by April 30,

2019, Silver Run's CPCN authority in connection with the Project shall be suspended and the Commission may deny, withhold, or further limit additional CPCN authority as necessary in the public interest.

WHEREFORE, for the reasons set forth herein, and pursuant to the authority set forth in 26 Del. C. §203E and Regulation 3011, Silver Run respectfully requests the Commission modify the Conditional Certificate of Public Convenience and Necessity granted to Silver Run in Order No. 9316 to extend the date for a ruling from FERC on the Project's cost allocation from February 28, 2019 until April 30, 2019, and further granting Silver Run authorization to begin construction in Delaware of critical path elements necessary to maintain the Project schedule and minimize additional cost increases to ratepayers consistent with Silver Run's attached Supplement.

Respectfully submitted,

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